

**At a Regular Meeting of the Town Council of the Town of Middletown,
RI held at the Middletown Town Hall on Tuesday, September 4, 2012
at 6:00 P.M.**

Council President Arthur S. Weber, Jr., Presiding

Vice President Bruce J. Long,

Councillor Richard Cambra

Councillor Christopher T. Semonelli

Councillor Antone C. Viveiros

Councillor Barbara A. VonVillas, Members Present

Councillor Edward J. Silveira, Jr., Absent

PLEDGE OF ALLEGIANCE TO THE FLAG

RECONSIDERATION

The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on:

If, in the same session that a motion has been voted on, but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)

EXECUTIVE SESSION-6:00 P.M.

1. Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a) (5) Land Acquisition (Wyatt Road), (5) Land Acquisition (Forest Avenue/Buck Road), (2) Litigation -Tax Appeal Case (Indian Avenue), (1) personnel (Town Administrator) and (2) Collective Bargaining (Town Hall and Fire Department).

On motion of Vice President Long, duly seconded, it was voted unanimously to recess open session and reconvene in executive session at 6:01 pm.

On motion of Vice President Long, duly seconded, it was voted unanimously to recess executive session and reconvene in open session at 7:00 pm.

On motion of Vice President Long, duly seconded, it was voted to approve said purchase with conditions: 1) legal counsel to review conservation easement and legal documents and 2) size of the barn;

Council President Weber, Councillors Cambra and Semonelli voted YES; Vice President Long, Councillors Viveiros and VonVillas voted NO to said motion; MOTION FAILED TO PASS.

On motion of Vice President Long, duly seconded, it was voted unanimously to seal the executive session minutes pursuant to Section 42-46-7. RIGL.

PUBLIC FORUM SESSION

2. Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting.

No one spoke during this session.

Councillor Semonelli recused himself from acting on the following item of business #3, due to a possible conflict of interest.

On motion of Vice President Long, duly seconded, it was voted unanimously to act as a Board of License commission.

BOARD OF LICENSE COMMISSION

3. Show Cause Hearing (Licensee Notified)

Show Cause Hearing for HPK, Inc., dba Ticket's holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 15 Aquidneck Avenue, Middletown, relative to alleged violations of Rhode Island General Laws, Town of Middletown Ordinances and Liquor Control Regulations, all concerning the consumption of alcohol after legal closing hour.

Show cause hearing was declared open.

Attorney Christopher Gontarz represented the Police Department, Assistant Town Solicitor J. Russell Jackson was present to advise the Board and Attorney Robert M. Silva, represented HPK, Inc. dba Tickets.

The stenographic transcript of said hearing is incorporated herein by reference as part of the official minutes of said meeting for the purpose of preserving an accurate record of testimony given.

Show cause hearing was declared closed.

On motion of Vice President Long, duly seconded, it was voted unanimously that the licensee's admission is freely and voluntarily given and that the licensee did commit the violation as set forth in the complaint and to impose a fine in the amount of \$750.00.

4. (Public Hearing Advertised)

Application of Andrews At Eastgate dba Gold's Wood Fire Grille & Caffe holder of a Class BL Alcoholic Beverage License, to upgrade its current Retailer's Alcoholic Beverage License for premises located at 21 Valley Road, Middletown, Rhode Island from Class BL (Beer and Wine) to Class BV (Full Service).

Public Hearing was declared open.

There being no person present desiring to be heard public hearing was declared closed.

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said license upgrade to a Class BV (Full Service) license.

5. Petition of Olin D. Gambrell, President and Vilma Parsonage, Bar Manager of the All-Vets Club, 985 Aquidneck Avenue, re: Request for expansion of Class D Alcoholic Beverage License to provide outdoor service on September 16, 2012, beginning at 12:00 noon, for the All-Vets Club Memorial Dedication – 2nd Anniversary for all fallen Sisters and Brothers and all Branches of the Military.

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said petition.

On motion of Vice President Long, duly seconded, it was voted unanimously to reconvene as a Town Council.

Councillor Cambra requested that items #7 and #8 be heard under the regular portion of the docket.

CONSENT

6. Approval of Minutes, re: Regular Meeting, August 6, 2012.

On motion of Vice President Long, duly seconded, it was voted unanimously to approve said minutes.

7. Resolution of the Town of Tiverton, re: Expressing support of citizen petition opposing tolls on the Sakonnet River Bridge.

Councillor Cambra requested the Town Clerk prepare a resolution expressing support of the citizen petition opposing tolls on the Sakonnet River Bridge.

Councillor VonVillas suggested the resolution include support of the citizen's group/petition.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said resolution.

8. Resolution of the Town of Portsmouth, re: Expressing support of citizen petition opposing tolls on the Sakonnet River Bridge.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said resolution.

9. Communication of Erin L. Donovan, Executive Director, Ocean State Tall Ships, re: Appreciation for support.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said communication.

10. Petition of CVDD II, LLC, with enclosure, re: To amend the Middletown Comprehensive Community Plan adopted in 1992, amended July 14, 2008 for Lot 9A Tax Assessor's Plat 111 be reclassified from Light Industrial to High Density Residential. (Requires Planning Board recommendation)

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said petition and forward to the Planning Board for recommendation.

11. Petition of CVDD II, LLC, with enclosure, re: To amend the Zoning Ordinance by changing Lot 9A Tax Assessor's Plat 111 from Light Industrial Traffic Sensitive (LIA) to Residential (R10). (Requires Planning Board recommendation)

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said petition and forward to the Planning Board for recommendation.

12. Resolution of the Middletown School Committee, re: Opposing sequestration as created by the Budget Control Act of 2011 and it's negative effect on Impact Aid Program and other federal programs.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive and support said resolution.

13. Memorandum of Finance Director, thru Town Administrator, with enclosure, re: Extinguishing the Town's Authority to Issue Bonds - \$2M for Police Facility.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

14. Resolution of the Council, re: Extinguishing the Town's Authority to Issue Bonds - \$2M for Police Facility.

On motion of Vice President Long, duly seconded, it was voted unanimously to pass said resolution.

15. Memorandum of Finance Director, thru Town Administrator, with enclosures, re: Municipal Financial Report – Quarter/Fiscal year ending June 30, 2012.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum and report.

16. Communication of Tax Assessor, with enclosure, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said communication.

17. Resolution of the Council, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice President Long, duly seconded, it was voted unanimously to pass said resolution.

18. Application of Marylous News, Inc. dba Marylous Coffee, 207 East Main Road for an Additional Hours of Operation License for the 2011-2012 licensing year. (NEW; Requires Advertising for Public Hearing)

On motion of Vice President Long, duly seconded, it was voted unanimously to advertise said license application for a public hearing to be held at the October 1, 2012 regular meeting of the Council.

19. Application of Rui F. Almeida dba Doughboy's Kitchen, Fall River

for RENEWAL of an Industrial Caterers License for the 2012-2013 licensing year.

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said license renewal.

20. Request of John Ashley, Jr. dba Castaway Gourmet, LLC, Portsmouth, Rhode Island for additional location added to Hawkers License for the 2012-2013 licensing year. (Permission on file, 499 East Main Road (Grange) - Fridays, Saturdays and Sundays)

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said additional location.

21. Applications four (4) from the following named persons, firms or corporations for Special Event Permits. (See Attached List)

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said Special Event permits.

LICENSE & PERMITS

22. Application of Sleepy's LLC, 1305 West Main Road for a Holiday Sale's License for the 2012-2013 licensing year. (NEW)

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said license.

23. Application of J&S Enterprises dba Bossman Burgers, 510 East Main Road for a Mechanical Amusement Device License for the 2012-2013 licensing year. (2 Games and 1 Juke box; NEW)

On motion of Vice President Long, duly seconded, it was voted

unanimously to grant said license.

24. Application of Marylous News, Inc. dba Marylous Coffee, 207 East Main Road for a Victualling House License for the 2011-2012 licensing year. (NEW)

On motion of Vice President Long, duly seconded, it was voted unanimously to grant said license contingent on Building Official, Fire Marshal, Public Works and Board of Health approvals.

PUBLIC HEARINGS

25. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, Article 25A Wind Turbines. (Planning Board recommendation attached)

Public Hearing was declared open.

Tim Hetland, 32 Loring Street, addressed the Council noting that the Wind Turbine issue has been discussed for the past six years. Mr. Hetland expressed concern with the Town restrictions for Wind Turbines and suggests the Town use the URI Wind Turbine study as a guideline for turbines in Middletown.

Manuel Mello, 31 Beacon Terrace North, noted that he is not against wind turbines for personal use; only opposed to reselling electricity from turbines to National Grid.

John Bagwill, 587 Tuckerman Avenue, addressed the Council noting his support for the ordinance referencing the URI study that provides minimum standards allowing municipalities to regulate the wind turbines in the town.

Councillor Semonelli read the following email entered here, into the record

Mr. Semonelli noted that an ordinance could not be written that would not impact neighbors. Councillor Semonelli expressed support of the ban of wind turbines except where farms exist.

Councillor Viveiros noted that the Council is responsible for the safety and quality of life of the residents. Mr. Viveiros expressed his support for the ordinance.

Councillor VonVillas noted appreciation for the people who came forward to speak on this matter. Ms. VonVillas expressed concern that the comments from the wind turbine survey were ignored and actually misrepresented a resident's comments to the extent that the resident published a letter in two media outlets.

Ray Alexander, 6 Coggeshall Circle, addressed the Council suggesting that the ordinance should be the same for all areas in Town. Mr. Alexander noted that if a wind turbine is not allowed in residential areas, they should not be allowed in farm areas.

Vice President Long noted that the ordinance amendment meets the guidelines of the URI study.

Public Hearing remains open.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

26. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, Article 6 Application of District Regulations, Section 602 Schedule of District Regulations – Uses and Districts. (Planning Board recommendation attached)

Public Hearing was declared open.

There were no persons present desiring to be heard.

Public Hearing remains open

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

27. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, Article 4 Definitions, Sections 602B and 725 (Solar Array). (Planning Board recommendation attached)

Public Hearing was declared open.

Town Planner Ronald Wolanski reviewed the memorandum, entered here:

Councillor Cambra questioned if there were Solar Array studies regarding noise or reflection.

Town Planner Ronald Wolanski, responding to Councillor Cambra, noted not to his knowledge.

Town Administrator Shawn Brown addressed the Council, noting his visit to an area with solar panels explaining that someone would have to be in close vicinity to hear any sound.

Manuel Mello, 31 Beacon Terrace North, explained that the Industrial Park panels are strictly a business proposition to sell electricity back to National Grid.

Councillor Viveiros noted that solar panels or wind turbine energy should be used on the property first before selling electricity to National Grid.

Tim Hetland, 32 Loring Street, addressed the Council explaining National Grid offers programs with different rates for the consumer to sell back generated electricity to National Grid.

Public Hearing remains open.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

ORDINANCES

28. An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in Amendment to the Town Code of the Town of Middletown, Title VII, Traffic Code, School Zones.

On motion of Vice President Long, duly seconded, it was voted unanimously to adopt said ordinance on its second reading.

29. An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in Amendment to the Town Code of the Town of Middletown, Title XI Business Regulations, Chapter 111, Alcoholic Beverages, Section 111.20 Alcoholic Training Certification.

On motion of Vice President Long, duly seconded, it was voted unanimously to adopt said ordinance on its second reading.

30. An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in Amendment to the Town Code of the Town of Middletown, Title III Administration, Chapter 36, Fee Schedule, Sections (29) Fire and rescue reports and (51) Public Safety Private Detail Billing Rates.

On motion of Vice President Long, duly seconded, it was voted unanimously to adopt said ordinance on its second reading.

**31. Memorandum of Tax Assessor, thru Town Administrator, re:
Change to Middletown Ordinance § 34.01 Definitions.**

**Town Administrator Shawn Brown reviewed the memorandum,
entered here:**

**On motion of Vice President Long, duly seconded, it was voted
unanimously to receive said memorandum.**

32. An Ordinance of the Town of Middletown (First Reading)

**An Ordinance in Amendment to the Town Code of the Town of
Middletown, Title III Administration, Chapter 34, Taxes, Section 34.04
Definitions.**

**On motion of Vice President Long, duly seconded, it was voted
unanimously to receive said ordinance on its first reading.**

OTHER COMMUNICATIONS

33. Communication of Joyce Williams, President, Newport County Branch, NAACP, re: Request support by placing an ad in the NAACP 93rd Anniversary Souvenir Booklet.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said communication and approve a full-page ad (cost \$125.) in the Anniversary Souvenir Booklet to be appropriated from the Council President's Discretionary Fund.

COUNCIL COMMUNICATIONS

34. Memorandum of Vice President Long, re: Intersection Oakwood and Wood Roads.

Vice President Long reviewed the memorandum, entered here:

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

It was requested that the Town Clerk forward this matter to the Middletown Police Department.

35. Memorandum of Vice President Long, re: Sidewalk repair between Milestone Dental Care at 94 East Main Road and SPEC Eye Care at 58 East Main Road.

Vice President Long reviewed the memorandum, entered here:

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

It was requested that the Administration contract the RI Department of Transportation regarding this matter.

36. Memorandum of Councillor Silveira, re: Sachuest Beach Utility Pole.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

Council President Weber recommends that the Town remain in communication with the Aquidneck Land Trust concerning this matter.

Town Administrator Shawn Brown noted that the Town will continue discussion with the Aquidneck Land Trust and Fish and Wildlife. Mr.

Brown noted that there is no set project, at this time it is in the preliminary stages.

TOWN ADMINISTRATOR COMMUNICATIONS

37. Memorandum of Town Administrator, with enclosures, re: Consultant - Cemetery.

Town Administrator Shawn Brown reviewed the memorandum, entered here:

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

38. Resolution of the Council, re: Consultant - Cemetery.

On motion of Vice President Long, duly seconded, it was voted unanimously to pass said resolution.

39. Memorandum of Town Administrator, with enclosures, re: Consulting – Kempenaar Valley.

On motion of Vice President Long, duly seconded, it was voted unanimously to continue said matter to the next regular meeting of the Council held on September 17, 2012.

40. Resolution of the Council, re: Consulting – Kempenaar Valley.

On motion of Vice President Long, duly seconded, it was voted unanimously to continue said matter to the next regular meeting of the Council held on September 17, 2012.

41. Memorandum of Town Administrator, with enclosures, re: Rhode Island Department of Transportation – Agreement – Police Details.

On motion of Vice President Long, duly seconded, it was voted unanimously to receive said memorandum.

On motion of Vice President Long, duly seconded, it was voted unanimously to approve said agreement and authorize the Town Administrator to execute.

On motion of Vice President Long, duly seconded, it was voted unanimously to recess open session and reconvene in executive session at 8:25 pm.

On motion of Councillor Cambra, duly seconded, it was voted unanimously to recess executive session and reconvene in open session at 9:00 pm.

On motion of Vice President Long, duly seconded, it was voted unanimously to approve the Tax Appeal settlement.

On motion of Vice President Long, duly seconded, it was voted unanimously to seal the executive session minutes pursuant to Section 42-46-7. RIGL.

On motion of Councillor Cambra, duly seconded, it was voted unanimously to adjourn said meeting at 9:05 pm.

Wendy J.W. Marshall, CMC

Council Clerk

